

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

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| Dennis Allen, et al. | : | |
| Plaintiffs | : | Case No. C-1-01-159 |
| v. | : | Judge Herman S. Weber |
| | : | Magistrate Judge Timothy S. Hogan |
| Leonard Kristal | : | |
| and | : | PLAINTIFFS MOTION FOR |
| John Crary | : | EXPEDITED RULE 16 SCHEDULING |
| Defendants | : | CONFERENCE or IN THE |
| | : | ALTERNATIVE TO EXTEND THE |
| | : | DEADLINE FOR FILING DISPOSITIVE |
| | : | MOTIONS |

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Plaintiffs Dennis Allen, et al. (Plaintiffs) move this court, pursuant to Fed. R. Civ. P. 16(b)(2) and S.D.. Ohio Civ. R. 16.2, for a Scheduling Conference on an expedited basis, to consider an appropriate revised deadline for filing of dispositive motions. Local Rule 16.2 permits the Magistrate to revise a previously issued scheduling order upon a showing of good cause. As shown below, good cause exists here to revise the current scheduling order and adjust the date for submission of dispositive motions.

Three compelling reasons exist to revise the current scheduling order with respect to the filing of dispositive motions. The current dispositive motion deadline in this matter is October 15, 2003. The first and perhaps most important reason to revise the current scheduling order is that the Court has yet to rule on Plaintiffs motion to review the Report and Recommendation of Magistrate Judge Hogan, filed April 3, 2003.

(R. 39 - Report and Recommendation; R. 46 - Motion to Review Report and Recommendation.) That report, if adopted, will establish the legal standard of liability Plaintiffs must meet in seeking summary judgment in this case. If Plaintiffs motion is granted a distinct legal standard will apply. Any dispositive motion filed by either party would require argument under both the standard of liability as suggested by Magistrate Judge Hogan and the standard of liability asserted by Plaintiffs in their motion to review. To be required to brief and submit evidence with respect to both standards will create an unnecessary burden and expense upon both parties, will unnecessarily burden the court, and will prove the antithesis of judicial economy. Succinctly, counsel does not wish to burden plaintiffs with the additional cost and expense of arguing two distinct legal standards.

Second, Plaintiffs only received the deposition transcripts of Michael Lindemuth and Robert Bernet, Jr. within the past week; we have yet to receive the deposition transcript of Michael Pekar, a crucial witness in this matter. Revision of the scheduling order to permit receipt and proper analysis key deposition testimony for inclusion in dispositive motions is a proper use of judicial economy, and the scarce resources of the parties.

Third, Defendant Crary has asserted third party claims against individual parties Shirley Monroe and Polly Jones seeking indemnity and contribution against each under ERISA. Each has moved to dismiss the claims against them. Those motions have been pending before the court since June 10, 2003. No decision has issued to date. Again, judicial economy and avoidance of unnecessary burden and expense on these third party defendants requires the scheduling order be revised to adjust the date for

filing of dispositive motions. It simply makes no sense for these parties to be required to file motions for summary judgment while motions that would dispose of the claims against them remain pending with the court.

Plaintiffs, upon having shown good cause for the scheduling order to be revised, request the Court set a telephone Rule 16 scheduling conference (Defendant Crary's counsel is in Burlingame, California) and to continue the dispositive motion deadline to a date set at that conference. Plaintiffs request this conference be done on an expedited basis to prevent expiration of the current dispositive motion deadline and any confusion that may arise as a result. In order to permit Plaintiffs a genuine opportunity to prosecute their significant claims against this Defendant, Plaintiffs respectfully request that the Court grant this motion.

In the alternative, for the reasons set forth above, should the Magistrate determine not to adjust the scheduling order, Plaintiffs request the deadline for filing dispositive motions be extended for a period of 30 days, to and including November 14, 2003.

Respectfully submitted,

/s/ Stephen A. Simon

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2003, a copy of the foregoing has been served by facsimile, email and U.S. regular mail, postage prepaid, upon Paul Marotta, The Corporate Law Group, 550 Airport Boulevard, Suite 120, Burlingame, California 94010, and by U.S. regular mail, postage prepaid, upon Leonard Kristal, 107 Diablo Drive, Kentfield, CA 94904, and Stephen R. Felson 36 E. Seventh Street Suite 1650, Cincinnati, Ohio 45202.

/s/ Stephen A. Simon

ATTORNEY FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DENNIS ALLEN, et al. : **Case No. C-1-01-159**
: **Judge Herman S. Weber**
vs. : **Magistrate Judge Timothy S. Hogan**
: **ORDER GRANTING MOTION FOR**
: **EXTENSION OF DISPOSITIVE**
THE LASSEN COMPANIES, INC., et al.: **MOTION DEADLINE**

Defendants :

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Before the Court is Plaintiffs Motion for Extension of Dispositive Motion
Deadline, and having fully considered the Motion;

The Court GRANTS this Motion. The deadline for filing dispositive motions in
this matter shall be continued to November 14, 2003.

IT IS SO ORDERED this _____ day of October, 2003.

Magistrate Judge Timothy S. Hogan
United States District Court
Southern District of Ohio
Western Division

Tendered by:

/s/ Stephen A. Simon

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